SERVED : June 21, 1993

NTSB Order No. EA-3888

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 26th day of May, 1993

JOSEPH M. DEL BALZO,
Acting Administrator,
Federal Aviation Administration,

Complainant,

v.

GERALD KEITH REPACHOLI,

Respondent.

Docket SE-10923

OPINION AND ORDER

The respondent appeals from the oral initial decision of Administrative Law Judge John E. Faulk, issued in this proceeding on June 22, 1990 at the conclusion of an evidentiary hearing.[1] The law judge affirmed an emergency order[2] of the Administrator revoking respondent's pilot certificates and first class medical certificate for allegedly falsifying a November 3, 1989

[1]A copy of the oral initial decision, an excerpt transcript, is attached.

[2]The respondent waived the emergency procedures.

application for a medical certificate[3] in violation of section 67.20(a)(l) of the Federal Aviation Regulations (FAR), 14 C.F.R. Part 67.[4] The Board now affirms the decision of the law judge.

Respondent, an Australian citizen, argues, among other things, in his appeal that the Administrator's proof of the existence of several alleged Australian criminal convictions was, for reasons to be discussed, inadequate to establish a false or fraudulent statement. In order to show an intentionally false statement under 67.20(a) (1), the Administrator must be able to show that an individual made an intentionally false statement, in reference to a material fact, with knowledge of its falsity.[5] In the instant case, if the alleged convictions do exist, there is no question that a violation resulted from respondent's negative answer to question 21-W.

The law judge found Administrator's Exhibit A-3, a Western Australia Police Department Court History of the respondent attested to by the Attache Police Liaison at the Australian

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[3] On the application, respondent answered "no" to question 21-W, inquiring about convictions other than traffic offenses.

[4] FAR section 67.20(a) (1) states, in relevant part:

"§ 67.20 *Applications, certificates, logbooks, reports, and records; Falsification, reproduction, or alteration.*

(a) No person may make or cause to be made--

(1) Any fraudulent or intentionally false statement on any application for a medical certificate under this part."

[5] *'Hart v. McLucas, 535* F.2d 516, 519 (9th Cir. 1976) .

embassy in Washington, D.C. , to be sufficient proof of respondent's convictions. The convictions noted therein were for such offenses as assault unlawful (common) , receiving stolen goods, assault occasioning bodily harm, firearm discharge causing public fear, and giving a false name. Respondent objected at the hearing and on appeal to the use of Adm. Exh. A-3, claiming that it should not have been admitted into evidence both because it was not properly authenticated and because it is double hearsay.

Respondent, at the hearing, called no witnesses, did not himself testify, and offered no exhibits. Therefore, respondent's appeal must stand or fall on the admissibility of Adm. Exh. A-3 as evidence of the alleged convictions.

Respondent argued that Exhibit A-3 was not admissible because it had not properly been authenticated under the Federal Rules of Evidence. It is well settled that the Federal Rules of Evidence, while instructive, are not controlling in Board proceedings . Exhibit A-3 was considered, not by jurors with little or no experience in the weighing of evidence, but by an administrative law judge experienced in discriminating between the credible and incredible, between trustworthy and untrustworthy evidence. Exhibit A-3 was examined extensively. Its trustworthiness is not really in question. Respondent does not deny the accuracy of the contents of the exhibit. Moreover, in respondent's April 2, 1990, response to the emergency order of

revocation, he acknowledged the existence of his convictions, while disputing their significance.[6]

Respondent's arguments are directed to whether there has been compliance with the particular requirements of the Federal Rules of Evidence, missing entirely the general thrust. Respondent needed to make more than procedural arguments. Respondent did not dispute, by way of testimony or the offer of exhibits, the existence of the convictions, and, as discussed above, had previously acknowledged those convictions. We think in these circumstances, the law judge was justified in accepting the exhibit into evidence.

Respondent also asserts that Exhibit A-3 is inadmissible because it is double hearsay. We regard the proper approach to multiple hearsay as nearly identical to that applicable to hearsay itself. The law judge may weigh it, taking into account its remoteness and reliability. Where hearsay within hearsay carries with it sufficient indicia of trustworthiness and the interests of justice will best be served by admission of the statement into evidence, we do not see why it should be deemed inadmissible or insufficient to provide a substantive basis for a decision. We think that this is such a case, particularly when the evidence offered here was corroborated by information respondent himself supplied in his notice of appeal of the revocation order.

[6] Respondent's notice of appeal of the Emergency Order of Revocation is part of the trial and appellate record, pursuant to 49 C.F.R. 821.40. "[A]ll papers, requests, and rulings filed in the proceeding shall constitute the exclusive record of the proceeding."

We recognize that statements in prior Board decisions indicate that hearsay within hearsay is per se inadmissible in Board proceedings. We overrule all such holdings and statements and expressly overrule such holdings and statements in *Administrator v. Smith,* 2 NTSB 2527, 2528 (1976); and *Administrator v.* Niolet, 3 NTSB 2846, 2849 (1980).

ACCORDINGLY , IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The initial decision and the order of revocation are affirmed; and
3. The revocation of respondent's pilot certificates and first class medical certificate shall begin 30 days from the date of service of this order.[7]

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART, and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

[7] For the purposes of this order, respondent must physically surrender his certificates to an appropriate representative of the FAA pursuant to FAR § 61.19(f).